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SERVICE DATE – OCTOBER 19, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-565 (Sub-No. 14X)

NEW YORK CENTRAL LINES, LLC–ABANDONMENT EXEMPTION–
IN MONTGOMERY AND SCHENECTADY COUNTIES, NY

Decided: October 18, 2005

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) (collectively, applicants), filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments and Discontinuance of Service for NYC to abandon and CSXT to discontinue service over approximately 6.3 miles of railroad from milepost QGW 159.6 to milepost QGW 165.9, between South Amsterdam in Montgomery County and Rotterdam Junction in Schenectady County, NY. Notice of the exemption was served and published in the Federal Register (68 FR 14473-74) on March 25, 2003. The notice stated that, if consummation had not been effected by NYC's filing of a notice of consummation by March 25, 2004, and there were no legal or regulatory barriers to consummation, the authority to abandon would automatically expire.

By decision and notice of interim trail use or abandonment (NITU) served on April 23, 2003, the proceeding was reopened, and a 180-day period was authorized for the New York State Office of Parks, Recreation and Historic Preservation (New York), to negotiate an interim trail use/rail banking agreement with NYC for the right-of-way involved in this proceeding pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act). The trail use negotiating period under the NITU was extended by decisions served on October 16, 2003, April 27, 2004, October 21, 2004, and April 21, 2005, and the consummation notice filing deadline also was extended by the decisions served on October 21, 2004, and April 21, 2005. The latest NITU extension is scheduled to expire on October 18, 2005. The consummation notice filing deadline is scheduled to expire on December 18, 2005.

On October 17, 2005, CSXT, successor by merger to NYC, filed a request for an additional 180-day extension of the NITU negotiating period until April 16, 2006. CSXT states that it has not consummated the abandonment, has not been able to finalize negotiations with New York, and desires to continue to negotiate for interim trail use/rail banking with New York. Additionally, CSXT requests an extension of the consummation notice filing deadline until June 15, 2006.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir 1996), cert. denied, 519 U.S.1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the Trails Act. Accordingly, the NITU negotiating period will be extended to April 16, 2006, and the consummation notice filing deadline will be extended until June 15, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The requests by CSXT for an additional 180-day NITU negotiating period and for an extension of time to exercise abandonment authority are granted.
2. The negotiating period under the NITU is extended to April 16, 2006.
3. The authority to abandon must be exercised on or before June 15, 2006.
4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary